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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
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9 TARA M.,

10 Plaintiff,

11 v.

12 COMMISSIONER OF SOCIAL
13 SECURITY,

14 Defendant.

15 NO. C18-634-JPD

16 ORDER AFFIRMING THE
17 COMMISSIONER

18 Plaintiff appeals the final decision of the Commissioner of the Social Security
19 Administration (“Commissioner”) which denied her application for Disability Insurance
20 Benefits (“DIB”) under Title II of the Social Security Act, 42 U.S.C. §§ 401-33, after a hearing
21 before an administrative law judge (“ALJ”). For the reasons set forth below, the Court
22 ORDERS that the Commissioner’s decision be AFFIRMED.

23 I. FACTS AND PROCEDURAL HISTORY

24 At the time of the administrative hearing, plaintiff was a thirty-six year old woman with
25 a tenth grade education. Administrative Record (“AR”) at 51-52. Her past work experience
26 includes employment as a cashier at numerous stores, a Mary Kay cosmetics salesperson, a
27 Starbucks barista, and pizza truck worker. AR at 52-54, 54, 203. At the time of the
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1 administrative hearing, plaintiff was still working part-time in a pizza truck cooking pizzas and
2 working as the cashier. AR at 52, 61.

3 On June 3, 2013, she filed an application for DIB, alleging an onset date of November
4 1, 2012. AR at 14, 176-77. Plaintiff asserts that she is disabled due to fibromyalgia, edema,
5 cellulitis, depression, anxiety, post-traumatic stress disorder (PTSD), and irritable bowel
6 syndrome (IBS). AR at 49.

7 The Commissioner denied plaintiff's claim initially and on reconsideration. AR at 14.
8 Plaintiff requested a hearing, which took place on February 12, 2015. AR at 44-76. On
9 March 2, 2015, the ALJ issued a decision finding plaintiff not disabled and denied benefits
10 based on his finding that plaintiff could perform her past relevant work as a cashier or fast food
11 worker. AR at 11-26. Plaintiff's request for review was denied by the Appeals Council, AR at
12 1-6, making the ALJ's ruling the "final decision" of the Commissioner as that term is defined
13 by 42 U.S.C. § 405(g). On May 7, 2018, plaintiff timely filed the present action challenging
14 the Commissioner's decision. Dkt. 4.

15 II. JURISDICTION

16 Jurisdiction to review the Commissioner's decision exists pursuant to 42 U.S.C. §§
17 405(g) and 1383(c)(3).

18 III. STANDARD OF REVIEW

19 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of
20 social security benefits when the ALJ's findings are based on legal error or not supported by
21 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th
22 Cir. 2005). "Substantial evidence" is more than a scintilla, less than a preponderance, and is
23 such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
24 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750

1 (9th Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in
2 medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*,
3 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a
4 whole, it may neither reweigh the evidence nor substitute its judgment for that of the
5 Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is
6 susceptible to more than one rational interpretation, it is the Commissioner's conclusion that
7 must be upheld. *Id.*

8 The Court may direct an award of benefits where "the record has been fully developed
9 and further administrative proceedings would serve no useful purpose." *McCartey v.*
10 *Massanari*, 298 F.3d 1072, 1076 (9th Cir. 2002) (citing *Smolen v. Chater*, 80 F.3d 1273, 1292
11 (9th Cir. 1996)). The Court may find that this occurs when:

12 (1) the ALJ has failed to provide legally sufficient reasons for rejecting the
13 claimant's evidence; (2) there are no outstanding issues that must be resolved
14 before a determination of disability can be made; and (3) it is clear from the
record that the ALJ would be required to find the claimant disabled if he
considered the claimant's evidence.

15 *Id.* at 1076-77; *see also Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000) (noting that
16 erroneously rejected evidence may be credited when all three elements are met).

17 IV. EVALUATING DISABILITY

18 The claimant bears the burden of proving that she is disabled within the meaning of the
19 Social Security Act (the "Act"). *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999) (internal
20 citations omitted). The Act defines disability as the "inability to engage in any substantial
21 gainful activity" due to a physical or mental impairment which has lasted, or is expected to
22 last, for a continuous period of not less than twelve months. 42 U.S.C. §§ 423(d)(1)(A),
23 1382c(a)(3)(A). A claimant is disabled under the Act only if her impairments are of such
24 severity that she is unable to do her previous work, and cannot, considering her age, education,

1 and work experience, engage in any other substantial gainful activity existing in the national
2 economy. 42 U.S.C. §§ 423(d)(2)(A); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th
3 Cir. 1999).

4 The Commissioner has established a five step sequential evaluation process for
5 determining whether a claimant is disabled within the meaning of the Act. *See* 20 C.F.R. §§
6 404.1520, 416.920. The claimant bears the burden of proof during steps one through four. At
7 step five, the burden shifts to the Commissioner. *Id.* If a claimant is found to be disabled at
8 any step in the sequence, the inquiry ends without the need to consider subsequent steps. Step
9 one asks whether the claimant is presently engaged in “substantial gainful activity.” 20 C.F.R.
10 §§ 404.1520(b), 416.920(b).¹ If she is, disability benefits are denied. If she is not, the
11 Commissioner proceeds to step two. At step two, the claimant must establish that she has one
12 or more medically severe impairments, or combination of impairments, that limit her physical
13 or mental ability to do basic work activities. If the claimant does not have such impairments,
14 she is not disabled. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant does have a severe
15 impairment, the Commissioner moves to step three to determine whether the impairment meets
16 or equals any of the listed impairments described in the regulations. 20 C.F.R. §§ 404.1520(d),
17 416.920(d). A claimant whose impairment meets or equals one of the listings for the required
18 twelve-month duration requirement is disabled. *Id.*

19 When the claimant’s impairment neither meets nor equals one of the impairments listed
20 in the regulations, the Commissioner must proceed to step four and evaluate the claimant’s
21 residual functional capacity (“RFC”). 20 C.F.R. §§ 404.1520(e), 416.920(e). Here, the
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23 ¹ Substantial gainful activity is work activity that is both substantial, i.e., involves
24 significant physical and/or mental activities, and gainful, i.e., performed for profit. 20 C.F.R. §
404.1572.

1 Commissioner evaluates the physical and mental demands of the claimant's past relevant work
2 to determine whether she can still perform that work. 20 C.F.R. §§ 404.1520(f), 416.920(f). If
3 the claimant is able to perform her past relevant work, she is not disabled; if the opposite is
4 true, then the burden shifts to the Commissioner at step five to show that the claimant can
5 perform other work that exists in significant numbers in the national economy, taking into
6 consideration the claimant's RFC, age, education, and work experience. 20 C.F.R. §§
7 404.1520(g), 416.920(g); *Tackett*, 180 F.3d at 1099, 1100. If the Commissioner finds the
8 claimant is unable to perform other work, then the claimant is found disabled and benefits may
9 be awarded.

10 V. DECISION BELOW

11 On March 2, 2015, the ALJ issued a decision finding the following:

- 12 1. The claimant meets the insured status requirements of the Social
Security Act through March 31, 2015.
- 13 2. The claimant has not engaged in substantial gainful activity since
November 1, 2012, the alleged onset date.
- 14 3. The claimant has the following severe impairments: fibromyalgia; hip
bursitis; opioid dependence; major depressive disorder; generalized
anxiety disorder; and panic disorder.
- 15 4. The claimant does not have an impairment or combination of
impairments that meets or medically equals the severity of one of the
listed impairments in 20 CFR Part 404, Subpart P, Appendix 1.
- 16 5. After careful consideration of the entire record, the undersigned finds
that the claimant has the residual functional capacity to perform light
work as defined in 20 CFR 404.1567(b) except she is limited to
occasional exposure to hazardous working conditions such as
proximity to unprotected heights and moving machinery; she is able to
adapt to a predictable work routine with no more than occasional
changes in processes and procedures; and she is limited to casual or
superficial public interaction at least 90% of the time.
- 17 6. The claimant is capable of performing past relevant work as a fast
food worker DOT#311.472-010, light, SVP 2 and cashier checker,
DOT#211.462-014, light, SVP 3. This work does not require the

1 performance of work-related activities precluded by the claimant's
2 residual functional capacity.

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- 7 7. The claimant has not been under a disability, as defined in the Social
8 Security Act, from November 1, 2012, through the date of this
9 decision.

10 AR at 16-25.

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12 VI. ISSUES ON APPEAL

13 The principal issues on appeal are:

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- 17 1. Did the ALJ err in evaluating plaintiff's testimony?
18 2. Did the ALJ err in evaluating the medical opinion evidence?
19 3. Did the ALJ err in evaluating the lay opinion of plaintiff's current boss and
20 friend, Ms. Carner?

21 Dkt. 10 at 1; Dkt. 11 at 1.

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23 VII. DISCUSSION

24 A. The ALJ Did Not Err in Evaluating Plaintiff's Testimony

1. *Legal Standard for Evaluating the Plaintiff's Testimony*

As noted above, it is the province of the ALJ to determine what weight should be afforded to a claimant's testimony, and this determination will not be disturbed unless it is not supported by substantial evidence. A determination of whether to accept a claimant's subjective symptom testimony requires a two-step analysis. 20 C.F.R. §§ 404.1529, 416.929; *Smolen*, 80 F.3d at 1281. First, the ALJ must determine whether there is a medically determinable impairment that reasonably could be expected to cause the claimant's symptoms. 20 C.F.R. §§ 404.1529(b), 416.929(b); *Smolen*, 80 F.3d at 1281-82. Once a claimant produces medical evidence of an underlying impairment, the ALJ may not discredit the claimant's testimony as to the severity of symptoms solely because they are unsupported by objective medical evidence. *Bunnell v. Sullivan*, 947 F.2d 341, 343 (9th Cir. 1991) (en banc); *Reddick v.*

1 *Chater*, 157 F.3d 715, 722 (9th Cir. 1988). Absent affirmative evidence showing that the
2 claimant is malingering, the ALJ must provide “clear and convincing” reasons for rejecting the
3 claimant’s testimony.² *Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014) (citing
4 *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012)). See also *Lingenfelter v. Astrue*, 504
5 F.3d 1028, 1036 (9th Cir. 2007).

When evaluating a claimant's subjective symptom testimony, the ALJ must specifically identify what testimony is not credible and what evidence undermines the claimant's complaints; general findings are insufficient. *Smolen*, 80 F.3d at 1284; *Reddick*, 157 F.3d at 722. The ALJ may consider "ordinary techniques of credibility evaluation," including a claimant's reputation for truthfulness, inconsistencies in testimony or between testimony and conduct, daily activities, work record, and testimony from physicians and third parties concerning the nature, severity, and effect of the alleged symptoms. *Thomas*, 278 F.3d at 958-59 (citing *Light v. Social Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997)).

2. The ALJ Provided Several Clear and Convincing Reasons for Discounting Plaintiff's Testimony

The ALJ found that plaintiff's "medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely credible for the reasons explained in this decision." AR at 20. First, the ALJ found that (1) plaintiff failed to follow treatment recommendations; (2) her impairments are adequately controlled by

² In Social Security Ruling (SSR) 16-3p, the Social Security Administration rescinded SSR 96-7p, eliminated the term “credibility” from its sub-regulatory policy, clarified that “subjective symptom evaluation is not an examination of an individual’s character[,]” and indicated it would more “more closely follow [its] regulatory language regarding symptom evaluation.” SSR 16-3p. This change was effective March 28, 2016 and is therefore not applicable to the March 2, 2015 ALJ decision in this case. The Court, moreover, continues to cite to relevant case law utilizing the term credibility.

1 medications; (3) plaintiff's statements to providers reflected secondary gain motivation; and
2 (4) her testimony regarding her symptoms was inconsistent with objective medical evidence.
3 AR at 21-22.

4 (i) *Failure to Comply with Treatment Recommendations*

5 The ALJ found that plaintiff failed to follow-through with both physical therapy and with
6 mental health treatment, although such treatment was recommended by her medical providers. AR
7 at 20-22. The ALJ may consider a failure to follow treatment recommendations, unless that failure
8 is attributed to the claimant's mental impairments. *Molina*, 674 F.3d at 1113-14.

9 The ALJ did not err by finding that plaintiff's lack of compliance with treatment
10 undermines her testimony. In 2013, a physical therapist said that plaintiff had improved some with
11 treatment and was no longer having pain with certain movements of her neck and hips. AR at 353.
12 However, plaintiff stopped attending physical therapy, and was subsequently discharged due to this
13 failure to attend her scheduled appointments in March 2014. AR at 430. Plaintiff returned, but was
14 discharged for failing to attend again in May, only two months later. AR at 428. With respect to
15 plaintiff's mental health, plaintiff said that she was not willing to attend counseling. AR at 544.
16 After staff inquired into what prevented plaintiff from attending, plaintiff was scheduled for
17 counseling but then failed to attend those appointments as well. AR at 464, 466. Plaintiff also
18 stated that she stopped taking psychiatric medication because she did not like it. AR at 415.
19 When the ALJ questioned plaintiff about her failure to attend appointments during the hearing,
20 plaintiff testified that she simply forgot her counseling appointments. However, the ALJ was not
21 required to believe this claim, as there was no evidence in the record that plaintiff had a severe
22 degree of memory impairment.

22 Accordingly, the ALJ did not err by finding that plaintiff's lack of compliance with
23 treatment recommendations, including physical therapy and mental health treatment, undermines
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1 her testimony. AR at 20-21. This was a clear and convincing reason, supported by substantial
2 evidence, for giving plaintiff's testimony less weight.

3 (ii) *Impairments Effectively Controlled by Medications are Not Disabling*

4 The ALJ also found that plaintiff's testimony was entitled to less weight because the
5 evidence of record suggested that when plaintiff was compliant with treatment, it was effective in
6 helping to alleviate plaintiff's physical and mental impairments. "Impairments that can be
7 controlled effectively with medication are not disabling...." *Warre ex rel. E.T. IV v. Comm'r of*
8 *Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006).

9 With respect to plaintiff's pain, the ALJ noted that this improved with medication and
10 injections. AR at 21. In January 2013, Dr. Stepan said plaintiff's fibromyalgia was stable. AR at
11 517. On May 2013, Dr. Stepan said her fibromyalgia was improving, and was better with
12 medications. AR at 544. With respect to plaintiff's mental health, plaintiff told healthcare providers
13 that medications helped her depression. AR at 321-22. Indeed, plaintiff testified at the hearing that
14 her depression medications helped. AR at 55.

15 Accordingly, the ALJ could reasonably find that when plaintiff was compliant with
16 treatment, it helped alleviate her pain from fibromyalgia as well as her mental health symptoms.
17 The effectiveness of plaintiff's medications was a clear and convincing reason, supported by
18 substantial evidence, for the ALJ to give plaintiff's testimony less weight.

19 (iii) *Inconsistent with Daily Activities*

20 Plaintiff found that plaintiff's testimony about her limitations was entitled to less
21 weight because it was inconsistent with her daily activities. AR at 22. Specifically, the ALJ
22 found that although plaintiff testified that she was largely bed-bound by her fatigue, swelling,
23 and pain, AR at 57-58, on other occasions plaintiff admitted to a much greater level of activity
24 including getting her kids ready for school and making them breakfast. AR at 418-19. She did

1 various household chores, and spent a few hours each day on the phone or texting to sell Mary
2 Kay cosmetics. AR at 418. In September 2013, she noted that she was active at her gym. AR
3 at 405-07. She continued working part-time for the pizza truck even at the time of the
4 administrative hearing, initially doing prep work but also interacting with customers as a
5 cashier. AR at 460. Accordingly, the ALJ did not err by finding that plaintiff's daily activities
6 were inconsistent with her testimony at the hearing regarding the severity of her limitations.

7 (iv) *Secondary Gain Motivation*

8 The ALJ also found that plaintiff's statements to providers reflected a secondary gain
9 motivation for applying for disability. AR at 22. As the ALJ noted, plaintiff said that she
10 wanted to apply for disability in order to be available to her children while they were young, and
11 then return to the workforce in the future. AR at 454, 471. Plaintiff also discussed being available
12 for her children because their father was incarcerated. AR at 471. Later in 2014, plaintiff said she
13 was seeking a psychiatric evaluation with her treating provider because she was advised to get one
14 for her disability application. AR at 458.

15 The ALJ could reasonably conclude, based on this evidence, that plaintiff appeared to have
16 some secondary gain motive. This was a clear and convincing reason, supported by substantial
17 evidence, for the ALJ to find plaintiff less than fully credible.

18 (v) *Inconsistency with Objective Medical Evidence*

19 Finally, the ALJ found that plaintiff's allegations are inconsistent with the objective
20 medical evidence, as plaintiff's "pain complaints exceed objective findings. Physical exams
21 consistently show full strength and normal gait. Despite reports of increased pain and hand
22 swelling in April 2013, the claimant had normal strength bilaterally in the upper and lower
23 extremities." AR at 21. The ALJ could not rely upon a lack of objective evidence, without
24 more, to reject plaintiff's testimony regarding the severity of her pain and symptoms from her

1 fibromyalgia. It is well established that fibromyalgia pain eludes such measurement.
2 However, in this case the ALJ properly considered the objective evidence among several other
3 valid factors in weighing plaintiff's testimony, which was not improper. AR at 21.

4 Accordingly, the ALJ provided several clear and convincing reasons, supported by
5 substantial evidence, for discounting plaintiff's testimony in this case. Plaintiff has not
6 established any harmful error in the ALJ's evaluation of plaintiff's testimony.

7 B. The ALJ Did Not Err in Evaluating the Medical Opinion Evidence

8 I. *Standards for Reviewing Medical Evidence*

9 As a matter of law, more weight is given to a treating physician's opinion than to that
10 of a non-treating physician because a treating physician "is employed to cure and has a greater
11 opportunity to know and observe the patient as an individual." *Magallanes v. Bowen*, 881 F.2d
12 747, 751 (9th Cir. 1989); *see also Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). A treating
13 physician's opinion, however, is not necessarily conclusive as to either a physical condition or
14 the ultimate issue of disability, and can be rejected, whether or not that opinion is contradicted.
15 *Magallanes*, 881 F.2d at 751. If an ALJ rejects the opinion of a treating or examining
16 physician, the ALJ must give clear and convincing reasons for doing so if the opinion is not
17 contradicted by other evidence, and specific and legitimate reasons if it is. *Reddick v. Chater*,
18 157 F.3d 715, 725 (9th Cir. 1988). "This can be done by setting out a detailed and thorough
19 summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and
20 making findings." *Id.* (citing *Magallanes*, 881 F.2d at 751). The ALJ must do more than
21 merely state his/her conclusions. "He must set forth his own interpretations and explain why
22 they, rather than the doctors', are correct." *Id.* (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22
23 (9th Cir. 1988)). Such conclusions must at all times be supported by substantial evidence.
24 *Reddick*, 157 F.3d at 725.

1 The opinions of examining physicians are to be given more weight than non-examining
2 physicians. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). Like treating physicians, the
3 uncontradicted opinions of examining physicians may not be rejected without clear and
4 convincing evidence. *Id.* An ALJ may reject the controverted opinions of an examining
5 physician only by providing specific and legitimate reasons that are supported by the record.
6 *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).

7 Opinions from non-examining medical sources are to be given less weight than treating
8 or examining doctors. *Lester*, 81 F.3d at 831. However, an ALJ must always evaluate the
9 opinions from such sources and may not simply ignore them. In other words, an ALJ must
10 evaluate the opinion of a non-examining source and explain the weight given to it. Social
11 Security Ruling (“SSR”) 96-6p, 1996 WL 374180, at *2. Although an ALJ generally gives
12 more weight to an examining doctor’s opinion than to a non-examining doctor’s opinion, a
13 non-examining doctor’s opinion may nonetheless constitute substantial evidence if it is
14 consistent with other independent evidence in the record. *Thomas v. Barnhart*, 278 F.3d 947,
15 957 (9th Cir. 2002); *Orn*, 495 F.3d at 632-33.

16 2. *Dr. Stepan*

17 Crenguta Stepan, M.D., treated plaintiff throughout the period under consideration.
18 AR at 279, 553. Plaintiff testified that Dr. Stepan treated her for fibromyalgia, asthma, pain
19 and depression. AR at 55. Dr. Stepan also completed paperwork for WorkFirst in January
20 2017. AR at 423. Dr. Stepan noted that plaintiff had fibromyalgia, bursitis of the hip, and
21 depression which resulted in widespread chronic pain and fatigue. AR at 423. Dr. Stepan
22 assessed plaintiff as limited to no sitting or standing for more than 30 minutes due to her
23 fibromyalgia. AR at 423. Dr. Stepan also felt that plaintiff would not be able to concentrate
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1 for long periods of time due to her fatigue and medications. AR at 423. Dr. Stepan felt that
2 plaintiff would be limited to 11-20 hours of light work activity per week. AR at 423-424.

3 The ALJ gave this opinion little weight as Dr. Stepan was content to only treat
4 plaintiff's fibromyalgia with long-term opioids (rather than exploring other treatment options)
5 and had noted improvement in plaintiff's symptoms with medication as well as "overall
6 stability." AR at 23. In addition, the ALJ noted that "as discussed, exams show mostly full
7 strength and normal gait." AR at 23. The ALJ did not err by questioning Dr. Stepan's opinion in
8 light of the doctor's own examination findings, which reflected both improvement and stability.

9 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). The ALJ cited to Exhibit 13F/6, as a
10 specific example, where plaintiff reported that her pain had improved with oxycodone. AR at 517.

11 The ALJ also questioned Dr. Stepan's opinions in light of the examination findings
12 throughout the record, because "as discussed, exams show mostly full strength and normal gait."
13 AR at 23. "The ALJ need not accept the opinion of any physician, including a treating physician, if
14 that opinion is brief, conclusory, and inadequately supported by clinical findings." *Chaudhry v.*
15 *Astrue*, 688 F.3d 661, 671 (9th Cir. 2012) (internal quotation marks omitted). Indeed, in April
16 2013, plaintiff had normal strength in her arms and legs. AR at 347-48. She did not have any
17 synovitis, *i.e.*, swelling of the joints. AR at 348. Later examinations in 2013 showed that plaintiff
18 continued to walk with a normal gait and that she generally did not have edema. AR at 395-96,
19 405-11, 522, 544-45. *But see* AR at 517 (noting some edema). While plaintiff had cellulitis (a skin
20 infection) on her leg in December 2013, this infection soon improved. AR at 522. The ALJ could
21 find that these benign objective findings tended to undermine Dr. Stepan's opinion that plaintiff
22 had not only severe chronic pain, but significant edema in her legs that rendered her unable to sit or
23 stand for long periods of time. Accordingly, the ALJ provided specific and legitimate reasons,
24 supported by substantial evidence, for giving Dr. Stepan's opinion little weight. AR at 23.

1 3. *Dr. Anderson*

2 Kathleen Andersen, M.D., performed a psychological evaluation of plaintiff in October
3 2013. AR at 415-21. Dr. Andersen interviewed plaintiff, reviewed some treatment notes, and
4 performed a mental status examination. AR at 415-20. Dr. Andersen diagnosed plaintiff with
5 a major depressive disorder, generalized anxiety disorder, and a panic disorder. AR at 420.
6 Dr. Andersen felt that plaintiff would have marked difficulty concentrating on tasks and
7 completing tasks in a timely fashion due to her emotional lability, high level of anxiety, low
8 energy, and pain. AR at 421. Dr. Andersen also felt that plaintiff would handle the additional
9 stresses and unforeseen problems of a workplace poorly. AR at 421. Finally, Dr. Andersen
10 felt that plaintiff would have marked difficulty interacting consistently with others related to
11 her irritability, impatience, and anxiety. AR at 421.

12 The ALJ considered Dr. Andersen's opinion but gave it little weight. AR at 23. The
13 ALJ found that the opinion was inconsistent with the mental status examinations and medical
14 evidence of record, and with plaintiff's demonstrated ability to interact with the public as a
15 cashier at her part time job at the pizza truck. AR at 23.

16 With respect to the ALJ's finding that Dr. Andersen's opinion was "inconsistent with
17 mental status exams and the medical evidence of record," AR at 23, the ALJ addressed this issue in
18 greater detail earlier in the decision, writing that "[d]espite allegations of disabling depression and
19 anxiety, mental status exams are mostly within normal limits." AR at 22. The ALJ cited to
20 examinations showing that plaintiff improved on the medication Effexor and that she behaved
21 largely normally on mental status examinations. AR at 321-22. In another mental status
22 examination, plaintiff was calm, polite, and cooperative, with logical thoughts. AR at 460. The
23 ALJ could reasonably find that these examination findings were inconsistent with the "marked"
24 difficulties suggested by Dr. Andersen. *See also Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d

1 595, 601 (9th Cir. 1999) (noting among other points that the claimant was engaging and
2 cooperative in treatment visits).

3 The ALJ also questioned Dr. Andersen's opinion given plaintiff's daily activities. The ALJ
4 may reasonably question a doctor's description of marked mental limitations given the claimant's
5 daily activities. *See Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 601-02 (9th Cir. 1999).
6 As the ALJ explained, “[t]he claimant's [ability] to work with the public in her part-time job is
7 inconsistent with Dr. Andersen's opinion of functioning.” AR at 23. Indeed, Dr. Andersen said that
8 plaintiff would have marked difficulties interacting with the public, supervisors, and even
9 coworkers due to “irritability, impatience, anxiety.” AR at 421. The ALJ could reasonably discredit
10 this opinion in light of plaintiff's demonstrated ability to work with the public and with some
11 coworkers in a pizza truck. AR at 61-62, 460. Under these circumstances, the ALJ did not err by
12 giving weight to the opinions of the State agency non-examining psychologists, who opined that
13 plaintiff could work with normal breaks and limited public interaction. AR at 24. Accordingly, the
14 ALJ provided specific and legitimate reasons, supported by substantial evidence, for discounting
15 Dr. Andersen's opinion. AR at 23.

16 C. The ALJ Did Not Err in Evaluating the Other Source Testimony

17 In order to determine whether a claimant is disabled, an ALJ may consider lay-witness
18 sources, such as testimony by nurse practitioners, physicians' assistants, and counselors, as
19 well as “non-medical” sources, such as spouses, parents, siblings, and friends. *See* 20 C.F.R. §
20 404.1527(f). Such testimony regarding a claimant's symptoms or how an impairment affects
21 his/her ability to work is competent evidence, and cannot be disregarded without comment.
22 *Dodrill v. Shalala*, 12 F.3d 915, 918-19 (9th Cir. 1993). This is particularly true for such non-
23 acceptable medical sources as nurses and medical assistants. *See* Social Security Ruling
24 (“SSR”) 06-03p (noting that because such persons “have increasingly assumed a greater

1 percentage of the treatment and evaluation functions previously handled primarily by
2 physicians and psychologists,” their opinions “should be evaluated on key issues such as
3 impairment severity and functional effects, along with the other relevant evidence in the file.”).
4 If an ALJ chooses to discount testimony of a lay witness, he must provide “reasons that are
5 germane to each witness,” and may not simply categorically discredit the testimony. *Dodrill*,
6 12 F.3d at 919.

7 Ms. Stephanie Carner was one of plaintiff’s friends. She ran a pizza restaurant and
8 hired plaintiff on a part-time basis. In April 2014, Ms. Carner submitted a letter describing
9 plaintiff’s performance. AR at 273-74. Ms. Carner noted that plaintiff was given a flexible
10 schedule (2-3 hours a day, 3 days a week) that allowed her to perform her duties when she felt
11 able. AR at 273-74. She submitted a second letter in February 2015. AR at 275. According
12 to Ms. Carner, by that time plaintiff was scheduled to work 15-18 hours a week, but was rarely
13 able to work all of her hours. AR at 275. She stated that plaintiff took frequent breaks on a
14 daily basis, and often called into work sick or left early. AR at 275. She stated that plaintiff
15 made mistakes and was forgetful in response to her pain and exhaustion. AR at 275.

16 The ALJ gave little weight to Ms. Carner’s statement. AR at 23. Information from
17 individuals such as Ms. Carner “provides an important source of information about [an
18 individual’s] impairments.” *See Regennitter v. Comm’r of Soc. Sec. Admin.*,
19 166 F.3d 1294, 1298 (9th Cir. 1999). Such sources are able to report their independent
20 observations of an individual’s functioning. *See Valentine v. Comm’r Soc. Sec. Admin.*, 574
21 F.3d 685, 694 (9th Cir. 2009) (“Friends and family members in a position to observe a
22 claimant’s symptoms and daily activities are competent to testify as to [his or] her condition.”).
23 However, an ALJ may reject a lay witness’s testimony only upon giving a reason germane to
24

1 that witness.” *Ghanim*, 763 F.3d at 1165 (quoting *Parra v. Astrue*, 481 F.3d 742, 750 (9th Cir.
2 2007)).

3 Here, the ALJ reasonably gave Ms. Carner’s statements little weight. AR at 23. As the
4 ALJ observed, Ms. Carner had admitted in her first letter that she rarely saw the plaintiff, which
5 tended to undermine her claim that plaintiff had a hard time taking care of herself. AR at 23. As
6 for Ms. Carner’s second letter, the ALJ noted that despite the description of plaintiff making
7 significant mistakes at work, other evidence showed that plaintiff had been entrusted with
8 additional responsibilities. AR at 23. Specifically, the ALJ noted that plaintiff was eventually
9 moved from being a prep cook (rolling dough balls and cutting vegetables) to working as the
10 cashier and interacting with the public to take orders, wait on customers, and use the cash register
11 15 to 18 hours per week. AR at 23, 61-62. The ALJ also noted that plaintiff was working 15-18
12 hours per week, which “supports a higher level of functioning than alleged” in Ms. Carner’s letter.
13 AR at 23, 274.

14 Accordingly, the ALJ provided several germane reasons for Ms. Carner’s statements
15 regarding plaintiff’s functioning were entitled to limited weight. The ALJ could reasonably
16 conclude that Ms. Carner’s description of the severity of plaintiff’s limitations, while she was
17 simultaneously giving plaintiff greater responsibility at work that involved interacting with
18 customers, was less than fully credible. AR at 21.

19 VIII. CONCLUSION

20 For the foregoing reasons, the Court orders that the Commissioner’s decision be
21 AFFIRMED. The role of this Court is limited. As noted above, the ALJ is responsible for
22 determining credibility, resolving conflicts in medical testimony, and resolving any other
23 ambiguities that might exist. *Andrews*, 53 F.3d at 1039. When the evidence is susceptible to
24 more than one rational interpretation, it is the Commissioner’s conclusion that must be upheld.

1 *Thomas*, 278 F.3d at 954. While it may be possible to evaluate the evidence as plaintiff
2 suggests, it is not possible to conclude that plaintiff's interpretation is the only rational
3 interpretation.

4 DATED this 28th day of February, 2019.

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7 JAMES P. DONOHUE
8 United States Magistrate Judge

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